



TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

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February 13, 2013

Janet McCabe
Principal Deputy Assistant Administrator
Office of Air and Radiation
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue N.W.
Washington, DC 20004

Subject: Treatment of "Transitional Sources" in New-Source NSPS for GHGs

Dear Janet:

Thanks again to you and your staff for taking the time to meet with Theresa Pugh and me last week. It was very nice to meet you, and I appreciated your willingness to talk about some of the challenges we face with OAR's rules for coal-fired power plants. I wanted to follow up on one of the issues we briefly discussed regarding the proposed NSPS for GHGs. In retrospect, I'm not sure that I did a very good job of explaining our concerns with the proposed definition of "transitional sources."

As we discussed, Tri-State and another rural electric cooperative, Sunflower Electric Power Corporation, have been working together since 2007 to develop a new coal-fired power unit in Kansas known as Holcomb 2. Tri-State and Sunflower are not-for-profit cooperatives (generally referred to as "co-ops") that provide electricity to their members in rural parts of Colorado, Nebraska, New Mexico, Wyoming, and Kansas.

As co-ops, we have a fiduciary obligation to provide our members with reliable electricity at the lowest possible cost, and we take this obligation very seriously. After considering our future resource needs and the various options for generating additional power, Tri-State determined several years ago that the Holcomb 2 was the best option for providing reliable, low-cost power for our members over the long term. We continue to follow the relative "as delivered" costs of coal and natural gas, but we still believe that a new coal-fired unit is probably the best option for our members.

Tri-State alone has already invested more than \$70 million in development costs for Holcomb 2, and the vast majority (all but about \$10 million) is irrecoverable. We have provided detailed information about these sunk costs in our written comments on the proposed GHG NSPS. We believe that we have done enough to "commence construction" within the meaning of the Proposed Rule and thus qualify Holcomb 2 as a "transitional source," but we are concerned that there will almost certainly be litigation over this issue. As you know, the determination of whether construction has commenced on a particular unit is normally made on

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case-by-case basis. Therefore, the proposed commence construction test creates uncertainty even for companies like Tri-State that have already invested years of effort and incurred substantial sunk cost in developing new units.

We believe that the proposed “commence construction” deadline is unnecessary and should not be included in the final rule. We believe that the final rule should state, based on the information in the rulemaking docket about the sunk costs already incurred by Tri-State and Sunflower and the extensive planning steps that we have already taken, that Holcomb 2 is a transitional unit and will not be subject to the final GHG NSPS. Any other units that are similarly situated should also be identified as transitional units without regard to whether “construction has commenced” by a particular date, but it appears that there is a very limited number of such units.

We believe that this approach is a logical outgrowth of the proposed rule and fully consistent with EPA’s proposal for dealing with “transitional sources.” The proposed rule recognizes that “transitional sources” are “a distinct set of sources with unique circumstances.” 77 Fed. Reg. at 22,421. EPA proposed to define the term “transitional source” to mean “a coal-fired power plant that has received approval for its complete [prevention of significant deterioration (“PSD”)] preconstruction permit by the date of this proposal . . . and that commences construction within 12 months of the date of this proposal.” 77 Fed. Reg. at 22,422. But the rationale for not applying the proposed GHG standard to these sources is that they have already incurred substantial sunk costs in developing plants that cannot meet those standards and that, therefore, the proposed standard cannot be considered the “best system of emission reduction adequately demonstrated” for them. 77 Fed. Reg. at 22,423.

As EPA noted on page 22,424 of the proposed rule, “Transitional sources are a very small group of sources with a distinct profile of costs, preconstruction planning, overall business plans, technical and design concerns, and equitable concerns.” These sources “have already incurred substantial costs in permitting” and have taken other preparatory steps to commence construction. “[B]ecause transitional sources have obtained a PSD permit and have developed their plans to the point where they are on the verge of construction,” converting their plant designs from coal-fired power plants to natural gas combined cycle plants “would be significantly more disruptive to their plans than for proposed non-transitional sources.” Such sources might need to “start over the process of developing the plant” if they were subject to the standards in the final GHG NSPS rule, which would “thereby render futile the planning and steps they have taken to date.” “[A]t a minimum,” these sources would face years of delays “and in fact [the need to redesign] may lead them to abandon the project.”

All these statements from the proposed rule are true regardless of whether a unit commences construction before or after April 2013. The commenced construction test is simply not an appropriate measure of the sunk costs and irretrievable commitments that transitional sources have already incurred.

It should also be noted that the commenced construction deadline is not necessary to ensure that transitional sources will be constructed in a timely fashion and will be completed within a reasonable time. Holcomb 2 and all other potential transitional sources have already





obtained the necessary PSD permits, and any source that fails to begin a continuous program of construction by a specific date or fails to complete that construction within a reasonable time will lose the authority to construct.

Again, we believe that EPA should eliminate the commenced construction deadline and simply identify specific units as transitional sources based on the information that they have already submitted regarding their sunk costs and the planning steps they have already taken. As noted above, this approach is a logical outgrowth of the proposed rule and fully consistent with EPA's proposal for dealing with "transitional sources." It will also provide greater certainty and avoid unnecessary litigation in the future

Thank you for considering our proposal. Please feel free to contact me if you have any questions.

Sincerely,

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